

103D CONGRESS
1ST SESSION

S. 288

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax on individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1993

Mr. DORGAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a reduction in the capital gains tax on individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Capital Gains Tax Fairness Act of 1993”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **TITLE I—REDUCTION IN CAP-**
 4 **ITAL GAINS TAX FOR INDIVID-**
 5 **UALS**

6 **SEC. 101. REDUCTION IN CAPITAL GAINS TAX FOR INDIVID-**
 7 **UALS.**

8 (a) GENERAL RULE.—Part I of subchapter P of
 9 chapter 1 (relating to treatment of capital gains) is
 10 amended by adding at the end thereof the following new
 11 section:

12 **“SEC. 1202. CAPITAL GAINS DEDUCTION FOR INDIVIDUALS.**

13 “(a) IN GENERAL.—In the case of an individual,
 14 there shall be allowed as a deduction for the taxable year
 15 an amount equal to the sum of—

16 “(1) the annual capital gains deduction (if any)
 17 determined under subsection (b), plus

18 “(2) the lifetime capital gains deduction for
 19 nontradable property (if any) determined under sub-
 20 section (c).

21 “(b) ANNUAL CAPITAL GAINS DEDUCTION.—

22 “(1) IN GENERAL.—For purposes of subsection
 23 (a), the annual capital gains deduction determined
 24 under this subsection is the lesser of—

1 “(A) the net capital gain for the taxable
2 year, or

3 “(B) \$1,000.

4 “(2) PHASE-OUT FOR INCOMES BETWEEN
5 \$100,000 AND \$150,000.—The \$1,000 amount speci-
6 fied in subparagraph (B) of paragraph (1) shall be
7 reduced by an amount which bears the same ratio to
8 \$1,000 as—

9 “(A) the adjusted gross income of the tax-
10 payer for the taxable year in excess of
11 \$100,000, bears to, or

12 “(B) \$50,000.

13 “(3) CERTAIN INDIVIDUALS NOT ELIGIBLE.—
14 This subsection shall not apply to—

15 “(A) any taxpayer whose adjusted gross in-
16 come for the taxable year exceeds \$150,000, or

17 “(B) any individual with respect to whom
18 a deduction under section 151 is allowable to
19 another taxpayer for a taxable year beginning
20 in the calendar year in which such individual’s
21 taxable year begins.

22 “(4) ANNUAL DEDUCTION NOT AVAILABLE FOR
23 SALES TO RELATED PERSONS.—The amount of the
24 net capital gain taken into account under paragraph
25 (1)(A) shall not exceed the amount of the net capital

1 gain determined by not taking into account gains
2 and losses from sales and exchanges to any related
3 person (within the meaning of section 267(b) or
4 707(b)(1)).

5 “(c) LIFETIME CAPITAL GAINS DEDUCTION FOR
6 NONTRADABLE PROPERTY.—

7 “(1) IN GENERAL.—For purposes of subsection
8 (a), the lifetime capital gains deduction for
9 nontradable property determined under this sub-
10 section for any taxable year is 50 percent of the
11 qualified gain for such taxable year.

12 “(2) LIMITATION.—

13 “(A) IN GENERAL.—The amount of the
14 qualified gain taken into account under para-
15 graph (1) for any taxable year shall not exceed
16 \$200,000 reduced by the aggregate amount of
17 the qualified gain taken into account under this
18 subsection by the taxpayer for prior taxable
19 years.

20 “(B) SPECIAL RULE FOR JOINT RE-
21 TURNS.—The amount of the qualified gain
22 taken into account under this subsection on a
23 joint return for any taxable year shall be allo-
24 cated equally between the spouses for purposes

1 of determining the limitation under subpara-
2 graph (A) for any succeeding taxable year.

3 “(3) QUALIFIED GAIN.—

4 “(A) IN GENERAL.—For purposes of para-
5 graph (1), the term ‘qualified gain’ means the
6 lesser of—

7 “(i) the net capital gain for the tax-
8 able year reduced by the annual capital
9 gains deduction for such taxable year, or

10 “(ii) the net capital gain for the tax-
11 able year determined by only taking into
12 account gains and losses from sales and
13 exchanges on or after January 27, 1993,
14 of qualified assets.

15 “(B) SPECIAL RULES.—

16 “(i) For purposes of subparagraph
17 (A)(ii), any amount treated as a capital
18 loss for the taxable year under section
19 1212 shall be treated as a loss from a sale
20 or exchange on or after January 27, 1993,
21 of a qualified asset.

22 “(ii) A taxpayer may elect for any
23 taxable year not to take into account under
24 this subsection all (or any portion) of the
25 qualified gain for such taxable year. Such

1 an election, once made, shall be irrev-
 2 ocable.

3 “(4) QUALIFIED ASSETS.—For purposes of this
 4 subsection, the term ‘qualified assets’ means any
 5 property other than—

6 “(A) stock or securities for which there is
 7 a market on an established securities market or
 8 otherwise, and

9 “(B) property (other than stock or securi-
 10 ties) of a kind regularly traded on an estab-
 11 lished market.

12 “(5) SUBSECTION NOT TO APPLY TO CERTAIN
 13 INDIVIDUALS.—This subsection shall not apply to
 14 any individual who has not attained age 25 before
 15 the close of the taxable year.

16 “(d) SECTION NOT TO APPLY TO CERTAIN TAX-
 17 PAYERS.—No deduction shall be allowed under this section
 18 to—

19 “(1) a married individual (within the meaning
 20 of section 7703) filing a separate return for the tax-
 21 able year, or

22 “(2) an estate or trust.

23 “(e) SPECIAL RULES.—

24 “(1) TREATMENT OF CERTAIN SALES OF IN-
 25 TERESTS IN PARTNERSHIPS, ETC.—For purposes of

1 subsection (c), any gain from the sale or exchange
2 of a qualified asset which is an interest in a partner-
3 ship, S corporation, or trust shall not be treated as
4 gain from the sale or exchange of a qualified asset
5 to the extent such gain is attributable to unrealized
6 appreciation in the value of property described in
7 subparagraph (A) or (B) of subsection (c)(4) which
8 is held by such entity. Rules similar to the rules of
9 section 751(f) shall apply for purposes of the preced-
10 ing sentence.

11 “(2) DEDUCTION AVAILABLE ONLY FOR SALES
12 OR EXCHANGES ON OR AFTER JANUARY 27, 1993.—
13 The amount of the net capital gain taken into ac-
14 count under subsections (b)(1)(A) and (c)(3)(A)(i)
15 shall not exceed the amount of the net capital gain
16 determined by only taking into account gains and
17 losses from sales and exchanges on or after January
18 27, 1993. For purposes of the preceding sentence,
19 any amount treated as a capital loss for the taxable
20 year under section 1212 shall be treated as a loss
21 from a sale or exchange on or after January 27,
22 1993.

23 “(3) DETERMINATION OF ADJUSTED GROSS IN-
24 COME.—

“(A) IN GENERAL.—For purposes of subsection (b), adjusted gross income shall be determined—

“(i) without regard to the deduction allowed under this section, but

“(ii) after the application of sections 86, 135, 219, and 469.

“(B) COORDINATION WITH OTHER ADJUSTED GROSS INCOME LIMITATIONS.—For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

“(4) SPECIAL RULE FOR PASS-THRU ENTITIES.—

“(A) IN GENERAL.—In applying this section with respect to any pass-thru entity—

“(i) the determination of when the sale or exchange occurs shall be made at the entity level, and

“(ii) any gain attributable to such entity shall in no event be treated as gain from sale or exchange of a qualified asset if interests in such entity are described in

1 subparagraph (A) or (B) of subsection
2 (c)(4).

3 “(B) PASS-THRU ENTITY DEFINED.—For
4 purposes of subparagraph (A), the term ‘pass-
5 thru-entity’ means—

6 “(i) a regulated investment company,

7 “(ii) a real estate investment trust,

8 “(iii) an S corporation,

9 “(iv) a partnership,

10 “(v) an estate or trust, and

11 “(vi) a common trust fund.”

12 (b) TREATMENT OF COLLECTIBLES.—

13 (1) IN GENERAL.—Section 1222 is amended by
14 inserting after paragraph (11) the following new
15 paragraph:

16 “(12) SPECIAL RULE FOR COLLECTIBLES.—

17 “(A) IN GENERAL.—Any gain or loss from
18 the sale or exchange of a collectible shall be
19 treated as a short-term capital gain or loss (as
20 the case may be), without regard to the period
21 such asset was held. The preceding sentence
22 shall apply only to the extent the gain or loss
23 is taken into account in computing taxable
24 income.

1 “(B) TREATMENT OF CERTAIN SALES OF
 2 INTERESTS IN PARTNERSHIPS, ETC.—For pur-
 3 poses of subparagraph (A), any gain from the
 4 sale or exchange of an interest in a partnership,
 5 S corporation, or trust which is attributable to
 6 unrealized appreciation in the value of collect-
 7 ibles held by such entity shall be treated as gain
 8 from the sale or exchange of a collectible. Rules
 9 similar to the rules of section 751(f) shall apply
 10 for purposes of the preceding sentence.

11 “(C) COLLECTIBLE.—For purposes of this
 12 paragraph, the term ‘collectible’ means any cap-
 13 ital asset which is a collectible (as defined in
 14 section 408(m) without regard to paragraph (3)
 15 thereof).”

16 (2) CHARITABLE DEDUCTION NOT AF-
 17 FECTED.—

18 (A) Paragraph (1) of section 170(e) is
 19 amended by adding at the end thereof the fol-
 20 lowing new sentence: “For purposes of this
 21 paragraph, section 1222 shall be applied with-
 22 out regard to paragraph (12) thereof (relating
 23 to special rule for collectibles).”

24 (B) Clause (iv) of section 170(b)(1)(C) is
 25 amended by inserting before the period at the

1 end thereof the following: “and section 1222
2 shall be applied without regard to paragraph
3 (12) thereof (relating to special rule for
4 collectibles)”.

5 (c) MINIMUM TAX.—Paragraph (1) of section 56(b)
6 is amended by adding at the end thereof the following new
7 subparagraph:

8 “(G) CAPITAL GAINS DEDUCTION NOT AL-
9 LOWED.—The deduction under section 1202
10 shall not be allowed.”

11 (d) COORDINATION WITH MAXIMUM CAPITAL GAINS
12 RATE.—Subsection (h) of section 1 (relating to maximum
13 capital gains rate) is amended to read as follows:

14 “(h) MAXIMUM CAPITAL GAINS RATE.—

15 “(1) IN GENERAL.—If a taxpayer has a net
16 capital gain for any taxable year, then the tax im-
17 posed by this section shall not exceed the sum of—

18 “(A) a tax computed at the rates and in
19 the same manner as if this subsection had not
20 been enacted on the greater of—

21 “(i) taxable income reduced by the
22 amount of the net capital gain, or

23 “(ii) the amount of taxable income
24 taxed at a rate below 28 percent, plus

1 “(B) a tax of 28 percent of the amount of
2 taxable income in excess of the amount deter-
3 mined under subparagraph (A).

4 “(2) COORDINATION WITH SECTION 1202 DE-
5 DUCTION.—For purposes of paragraph (1), the
6 amount of the net capital gain shall be reduced by
7 the sum of—

8 “(A) the amount allowable as a deduction
9 under section 1202(a)(1), plus

10 “(B) the amount of the qualified gain (as
11 defined in section 1202(c)) for the taxable year
12 to the extent taken into account under section
13 1202(c)(1) for the taxable year.”

14 (d) CONFORMING AMENDMENTS.—

15 (1) Subsection (a) of section 62 is amended by
16 inserting after paragraph (14) the following new
17 paragraph:

18 “(15) CAPITAL GAINS DEDUCTION.—The deduc-
19 tion allowed by section 1202.”

20 (2) Clause (ii) of section 163(d)(4)(B) is
21 amended by inserting “, reduced by the amount of
22 any deduction allowable under section 1202 attrib-
23 utable to gain from such property” after “invest-
24 ment”.

1 (3)(A) Paragraph (2) of section 172(d) is
2 amended to read as follows:

3 “(2) CAPITAL GAINS AND LOSSES OF TAX-
4 PAYERS OTHER THAN CORPORATIONS.—In the case
5 of a taxpayer other than a corporation—

6 “(A) the amount deductible on account of
7 losses from sales or exchanges of capital assets
8 shall not exceed the amount includible on ac-
9 count of gains from sales or exchanges of cap-
10 ital assets; and

11 “(B) the deduction provided by section
12 1202 shall not be allowed.”

13 (B) Subparagraph (B) of section 172(d)(4) is
14 amended by inserting “, (2)(B),” after “paragraph
15 (1)”.

16 (4)(A) Section 220 (relating to cross reference)
17 is amended to read as follows:

18 **“SEC. 220. CROSS REFERENCES.**

**“(1) For deduction for net capital gains in the case
of a taxpayer other than a corporation, see section
1202.**

**“(2) For deductions in respect of a decedent, see
section 691.”**

19 (B) The table of sections for part VII of sub-
20 chapter B of chapter 1 is amended by striking “ref-
21 erence” in the item relating to section 220 and in-
22 serting “references”.

1 (5) Paragraph (4) of section 691(c) is amended
2 by striking “1201, and 1211” and inserting “1201,
3 1202, and 1211”.

4 (6) The second sentence of paragraph (2) of
5 section 871(a) is amended by inserting “such gains
6 and losses shall be determined without regard to sec-
7 tion 1202 (relating to deduction for net capital gain)
8 and” after “except that”.

9 (7) Paragraph (1) of section 1402(i) is
10 amended to read as follows:

11 “(1) IN GENERAL.—In determining the net
12 earnings from self-employment of any options dealer
13 or commodities dealer—

14 “(A) notwithstanding subsection (a)(3)(A),
15 there shall not be excluded any gain or loss (in
16 the normal course of the taxpayer’s activity of
17 dealing in or trading section 1256 contracts)
18 from section 1256 contracts or property related
19 to such contracts, and

20 “(B) the deduction provided by section
21 1202 shall not apply.”

22 (f) CLERICAL AMENDMENT.—The table of sections
23 for part I of subchapter P of chapter 1 is amended by
24 adding at the end thereof the following new item:

 “Sec. 1202. Capital gains deduction for individuals.”

25 (g) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 shall apply to taxable years ending on or after Janu-
 4 ary 27, 1993.

5 (2) TREATMENT OF COLLECTIBLES.—The
 6 amendments made by subsection (b) shall apply to
 7 dispositions on or after January 27, 1993.

8 (3) COORDINATION WITH PRIOR TRANSITION
 9 RULE.—Any amount treated as long-term capital
 10 gain by reason of paragraph (3) or (4) of section
 11 1122(h) of the Tax Reform Act of 1986 shall not be
 12 taken into account for purposes of applying section
 13 1202 of the Internal Revenue Code of 1986 (as
 14 added by this section).

15 **TITLE II—DEPRECIATION** 16 **RECAPTURE**

17 **SEC. 201. RECAPTURE UNDER SECTION 1250 OF TOTAL** 18 **AMOUNT OF DEPRECIATION.**

19 (a) GENERAL RULE.—Subsections (a) and (b) of sec-
 20 tion 1250 (relating to gain from disposition of certain de-
 21 preciable realty) are amended to read as follows:

22 “(a) GENERAL RULE.—Except as otherwise provided
 23 in this section, if section 1250 property is disposed of, the
 24 lesser of—

1 “(1) the depreciation adjustments in respect of
2 such property, or

3 “(2) the excess of—

4 “(A) the amount realized (or, in the case
5 of a disposition other than a sale, exchange, or
6 involuntary conversion, the fair market value of
7 such property), over

8 “(B) the adjusted basis of such property,
9 shall be treated as gain which is ordinary income. Such
10 gain shall be recognized notwithstanding any other provi-
11 sion of this subtitle.

12 “(b) DEPRECIATION ADJUSTMENTS.—For purposes
13 of this section, the term ‘depreciation adjustments’ means,
14 in respect of any property, all adjustments attributable to
15 periods after December 31, 1963, reflected in the adjusted
16 basis of such property on account of deductions (whether
17 in respect of the same or other property) allowed or allow-
18 able to the taxpayer or to any other person for exhaustion,
19 wear and tear, obsolescence, or amortization (other than
20 amortization under section 169, 185 (as in effect before
21 its repeal by the Tax Reform Act of 1986), 188 (as in
22 effect before its repeal by the Revenue Reconciliation Act
23 of 1990), 190, or 193). For purposes of the preceding sen-
24 tence, if the taxpayer can establish by adequate records
25 or other sufficient evidence that the amount allowed as

1 a deduction for any period was less than the amount allow-
 2 able, the amount taken into account for such period shall
 3 be the amount allowed.”

4 (b) LIMITATION IN CASE OF INSTALLMENT SALES.—
 5 Subsection (i) of section 453 is amended—

6 (1) by striking “1250” the first place it appears
 7 and inserting “1250 (as in effect on the day before
 8 the date of the enactment of the Capital Gains Tax
 9 Fairness Act of 1993)”, and

10 (2) by striking “1250” the second place it ap-
 11 pears and inserting “1250 (as so in effect)”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Subparagraph (E) of section 1250(d)(4) is
 14 amended—

15 (A) by striking “additional depreciation”
 16 and inserting “amount of the depreciation ad-
 17 justments”, and

18 (B) by striking “ADDITIONAL DEPRECIA-
 19 TION” in the subparagraph heading and insert-
 20 ing “DEPRECIATION ADJUSTMENTS”.

21 (2) Subparagraph (B) of section 1250(d)(6) is
 22 amended to read as follows:

23 “(B) DEPRECIATION ADJUSTMENTS.—In
 24 respect of any property described in subpara-
 25 graph (A), the amount of the depreciation ad-

1 justments attributable to periods before the dis-
2 tribution by the partnership shall be—

3 “(i) the amount of gain to which sub-
4 section (a) would have applied if such
5 property had been sold by the partnership
6 immediately before the distribution at its
7 fair market value at such time, reduced by
8 “(ii) the amount of such gain to which
9 section 751(b) applied.”

10 (3) Subsection (d) of section 1250 is amended
11 by striking paragraph (10).

12 (4) Section 1250 is amended by striking sub-
13 sections (e) and (f) and by redesignating subsections
14 (g) and (h) as subsections (e) and (f), respectively.

15 (5) Paragraph (4) of section 50(c) is amended
16 to read as follows:

17 “(4) RECAPTURE OF REDUCTION.—For pur-
18 poses of sections 1245 and 1250, any reduction
19 under this subsection shall be treated as a deduction
20 allowed for depreciation.”

21 (6) Clause (i) of section 267(e)(5)(D) is amend-
22 ed by striking “section 1250(a)(1)(B)” and inserting
23 “section 1250(a)(1)(B) (as in effect on the day be-
24 fore the date of the enactment of the Capital Gains
25 Tax Fairness Act of 1993)”.

1 (7)(A) Subsection (a) of section 291 is amended
2 by striking paragraph (1) and by redesignating
3 paragraphs (2), (3), (4), and (5) as paragraphs (1),
4 (2), (3), and (4), respectively.

5 (B) Subsection (c) of section 291 is amended to
6 read as follows:

7 “(c) SPECIAL RULE FOR POLLUTION CONTROL FA-
8 CILITIES.—Section 168 shall apply with respect to that
9 portion of the basis of any property not taken into account
10 under section 169 by reason of subsection (a)(4).”

11 (C) Section 291 is amended by striking sub-
12 section (d) and redesignating subsection (e) as sub-
13 section (d).

14 (D) Paragraph (2) of section 291(d) (as redes-
15 ignated by subparagraph (C)) is hereby repealed.

16 (E) Subparagraph (A) of section 265(b)(3) is
17 amended by striking “291(e)(1)(B)” and inserting
18 “291(d)(1)(B)”.

19 (F) Subsection (c) of section 1277 is amended
20 by striking “291(e)(1)(B)(ii)” and inserting
21 “291(d)(1)(B)(ii)”.

22 (8) Subsection (d) of section 1017 is amended
23 to read as follows:

24 “(d) RECAPTURE OF DEDUCTIONS.—For purposes of
25 sections 1245 and 1250—

1 “(1) any property the basis of which is reduced
2 under this section and which is neither section 1245
3 property nor section 1250 property shall be treated
4 as section 1245 property, and

5 “(2) any reduction under this section shall be
6 treated as a deduction allowed for depreciation.”

7 (9) Paragraph (5) of section 7701(e) is amend-
8 ed by striking “(relating to low-income housing)”
9 and inserting “(as in effect on the day before the
10 date of the enactment of the Capital Gains Tax
11 Fairness Act of 1993)”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to dispositions made on or after
14 January 27, 1993, in taxable years ending on or after
15 such date.

○

S 288 IS——2